

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

ABCO West Electrical Construction &
Design, L.L.C. and ABCO Electrical
Construction & Design, L.L.C.

Defendants.

Case No. CV 11-01842-PHX-FJM

CONSENT DECREE

The Joint Motion for Entry of Consent Decree is GRANTED. (Doc. 32)

The United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”) filed this action against ABCO West Electrical Construction & Design, L.L.C. (“ABCO West”) and ABCO Electrical Construction & Design, L.L.C. (referred to collectively as “ABCO”) to enforce Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq., as amended (“the ADA”). In the Complaint, the Commission alleged that Defendants discriminated against Bill Hackney because of his disability, including but not limited to terminating Mr. Hackney’s employment because of his disability and in retaliation for his requests for accommodations, and failing to rehire Mr. Hackney because of his disability and in retaliation against Mr. Hackney because he engaged in protected activity. Defendants deny all allegations of the Complaint.

1 The Parties do not object to the jurisdiction of the Court over this action and waive
2 their rights to a jury trial and the entry of findings of fact and conclusions of law.

3 It is hereby ORDERED, ADJUDGED AND DECREED:

4 1. This Decree resolves all claims of the Commission against Defendants,
5 including back pay, compensatory and punitive damages, interest and injunctive relief
6 arising out of the issues in this lawsuit.

7 **INJUNCTION**

8 2. ABCO West and their officers, employees, successors, assigns, and all
9 persons in active concert or participation with them, both at the time that this Decree
10 becomes effective and for the duration of this Decree, are permanently enjoined from:

11 (1) engaging in any employment practice which unlawfully discriminates against an
12 employee or applicant covered under the Americans with Disabilities Act, as amended,
13 on the basis of disability and from (2) retaliating against any employee because he or she:
14 (i) opposes or opposed discriminatory practices made unlawful by the ADA; (ii) files or
15 filed a charge of discrimination or assists, assisted, participates, or participated in the
16 filing of a charge of disability discrimination; or (iii) assists, assisted, participates or
17 participated in an investigation or proceeding brought under the federal laws prohibiting
18 disability discrimination or retaliation.

19
20 **MONETARY RELIEF**

21 3. Judgment is entered in favor of the Commission and against ABCO West in
22 the amount of twenty-three thousand dollars (\$23,000).

23 4. Within ten days of entry of this Decree, ABCO West shall forward to Mr.
24 Bill Hackney a cashier's check or money order in the amount of twenty-three thousand
25 dollars (\$23,000), less withholdings described below for backpay. This gross sum
26 includes seven thousand dollars (\$7,000) in settlement of back wages and sixteen
27 thousand dollars (\$16,000) in settlement of compensatory damages. Within three
28 business days of the issuance of the cashier's checks or money orders, Defendants shall
submit a copy of the checks or money orders and all related correspondence to Mary Jo

1 O'Neill, Regional Attorney, Equal Employment Opportunity Commission, 3300 North
2 Central Avenue, Suite 690, Phoenix, Arizona 85012.

3 5. ABCO West shall pay the employer's share of payroll taxes it owes on the
4 seven thousand dollars (\$7,000) in back wages for the tax year during which payment is
5 made. ABCO West will be responsible for paying the employer's share of FUTA and
6 FICA taxes and the amount shall not be taken from the settlement amount. Mr. Hackney
7 will provide ABCO West with a W-4 and A-4 within three days of the entry of the
8 Consent Decree. ABCO West will calculate the payroll taxes owed by Mr. Hackney
9 based on the W-4 and A-4 provided by Mr. Hackney. ABCO West shall make no
10 deductions from the amount set forth as compensatory damages. ABCO West shall issue
11 a United States Internal Revenue Service Form 1099 to Mr. Hackney for the sixteen
12 thousand dollar (\$16,000) compensatory damages payment and a W-2 for the seven
13 thousand dollar (\$7,000) back pay payment for the tax year during which payment is
14 made.

15 6. ABCO West shall not condition the receipt of individual relief on Mr.
16 Hackney's agreement to (a) maintain as confidential the terms of this decree or the
17 factual allegations giving rise to the charge of discrimination, (b) waive his statutory right
18 to file a charge with any federal or state anti-discrimination agency, or (c) waive his right
19 to apply for a position with the Defendants.

20 **OTHER RELIEF**

21 7. Within ten (10) days of entry of this decree, Defendants shall expunge from
22 Mr. Hackney's personnel file: (a) all references to the charge of discrimination filed
23 against Defendants that formed the basis of this action; (b) all references to Mr.
24 Hackney's participation in this action; and (c) any documents which relate to complaints
25 by Mr. Hackney or investigation of Mr. Hackney's complaints of unlawful discrimination
26 on the basis of disability.

27 8. Within ninety (90) days of the entry of this Decree, ABCO West shall
28 assign one or more employees the responsibility to be the "ADA Coordinator(s)" to the

1 extent ABCO West has the requisite number of employees for the applicability of the
2 ADA. ABCO West shall instruct all employees that they are required to consult with and
3 seek assistance from the ADA Coordinator(s) when responding to requests and/or
4 apparent needs for reasonable accommodations, when responding to allegations of
5 denials of reasonable accommodations, and when responding to complaints of
6 discrimination on the basis of disability.

7 **NOTICE**

8 9. For the duration of this Decree, ABCO West shall post the Notice attached
9 as Exhibit A in a prominent place frequented by its employees at its facilities. The
10 Notice shall be posted in English. The Notice shall be the same type, style, and size as
11 set forth in Exhibit A.

12 **POLICIES/PROCEDURES**

13 10. Within sixty (60) days of the entry of this Decree, ABCO West shall
14 develop written policies or revise existing policies concerning discrimination on the basis
15 of disability. The written policies must include at a minimum:

16 A. A strong and clear commitment to a workplace free of
17 discrimination based on disability.

18 B. A statement that all applicants and employees with disabilities may
19 request a reasonable accommodation.

20 C. A clear and easy procedure for applicants and employees to follow
21 when requesting accommodations.

22 D. A statement that ABCO West will not deny employment
23 opportunities to individuals with disabilities based on their need for reasonable
24 accommodations.

25 E. A clear procedure for supervisory and management employees to
26 follow when receiving requests for accommodation and attempting to obtain approval of
27 requests for accommodation. Under this procedure, employees and managers shall be
28

1 required to seek assistance from the ADA Coordinator(s) when responding to requests
2 and/or apparent needs for reasonable accommodations, as set forth under paragraph 8.

3 F. A strong and clear statement encouraging persons who believe they
4 have been discriminated against on the basis of disability or retaliated against to report
5 their concern to an appropriate management official.

6 G. An assurance that ABCO West shall investigate allegations of
7 discrimination based on disability promptly, fairly, reasonably, and effectively, and that
8 appropriate corrective action shall be taken by ABCO West to make victims whole and to
9 eradicate the unlawful conduct.

10 H. A description of the consequences, up to and including termination,
11 that shall be imposed upon employees who engage in unlawful conduct.

12 I. An assurance of non-retaliation against employees who report that
13 they believe they or other employees have been subjected to unlawful discrimination
14 and/or who have asked for reasonable accommodation.

15 11. Within ninety (90) days of the entry of this Decree, ABCO West will
16 distribute the policies described in paragraph ten to all of their employees.

17 **TRAINING**

18 12. ABCO West shall provide training to its employees located in Arizona and
19 any employees with managerial responsibility for ABCO West's Arizona locations for a
20 period of two years from the date of this Decree. These employees shall attend a live
21 training seminar or a videotaped showing of a live training seminar each year. The
22 trainings shall comply with the following additional terms:

23 A. The seminars shall review and explain all aspects of the ADA and
24 ABCO West's policies, set forth in paragraph ten of this Decree including, but not
25 limited to, the following topics: nondiscrimination in hiring; the ABCO West's request
26 procedures for provision of reasonable accommodations to applicants and employees;
27 ABCO West's policy against retaliation, ADA provisions prohibiting the denial of
28 employment opportunities based on a disabled individual's need for reasonable

1 accommodations; ADA provisions prohibiting retaliation against individuals who engage
 2 in protected activity or request reasonable accommodations, ABCO West's procedures on
 3 the mandatory interactive process and the provision of reasonable accommodations to
 4 disabled applicants and employees; the role of the ADA Coordinator, the rights and
 5 responsibilities of applicants, employees, and employers during the interactive process,
 6 and in the provision of reasonable accommodation; reasonableness of requests for
 7 accommodations; typical accommodations for people with disabilities; and awareness of
 8 issues affecting applicants and employees who are disabled.

9 B. During the first year of the Consent Decree, the training seminars
 10 shall be conducted within four months of the entry of this Decree. During the second
 11 year, the training seminars shall be conducted once a year, at the beginning of the
 12 calendar year.

13 C. The training seminars shall be at least one and a half hours including
 14 time for questions and answers. ABCO West's employees shall register when they attend
 15 a training seminar. The registry of attendance shall be retained by ABCO West for the
 16 duration of this Decree.

17 D. ABCO West shall obtain the EEOC's approval of the
 18 consultants/lecturers selected by Defendants to provide the training described above. At
 19 least sixty (60) days prior to each proposed training seminar, ABCO West shall submit
 20 the name, telephone number and resume of the proposed consultant/lecturer, with the
 21 dates of the proposed training seminar and an outline of the contents of the training, to
 22 the Regional Attorney of the Phoenix District Office of the EEOC, at the address
 23 provided in paragraph four above.

24 **REPORTING BY DEFENDANTS AND ACCESS BY EEOC**

25 13. ABCO West shall report in writing and in affidavit form to the Regional
 26 Attorney of the Commission's Phoenix District Office, at the address provided in
 27 paragraph four above, beginning six months from the date of the entry of this Decree, and
 28 thereafter every year for the duration of the Decree, the following information:

1 A. A copy of the revised policies and procedures required in paragraphs
2 ten and eleven of this Decree.

3 B. Any changes, modifications, revocations, or revisions to its policies
4 and procedures which concern or affect the subjects of unlawful discrimination based on
5 disability and retaliation.

6 C. Verification that ABCO West has implemented the procedures set
7 forth in paragraphs seven through eleven.

8 D. The name, address, position, and telephone number of any individual
9 who has brought allegations, whether formal or informal, of discrimination on the basis
10 of disability and/or denial of reasonable accommodations, or retaliation against ABCO
11 West personnel including, but not limited to, management officials and/or non-
12 management employees, during the first six months, and thereafter every year, preceding
13 the report to the EEOC. The nature of the complaint, investigatory efforts made by
14 ABCO West , and corrective action taken, if any, shall also be specified.

15 14. The Commission, upon reasonable notice and agreement, shall have the
16 right to enter and inspect ABCO West's premises and work sites to ensure compliance
17 with this Decree.

18 **COSTS AND DURATION**

19 15. Each Party shall bear its costs and attorney's fees incurred as a result of this
20 action and through the filing of this Decree

21 16. The duration of this Decree shall be two years from its entry. This Court
22 shall retain jurisdiction over this action for the duration of the Decree, during which the
23 Commission may petition this Court for compliance with this Decree. Should the Court
24 determine that ABCO West has not complied with this Decree, the Court may order
25 appropriate relief, including extension of this Decree for such period as may be necessary
26 to remedy its non-compliance, an award of attorney's fees and costs, and fines for
27 contempt of court.

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1 17. Absent extension, this Decree shall expire by its own terms at the end of
2 two years from the date of entry without further action by the Parties.

3 18. The Parties agree to entry of this Decree and judgment subject to final
4 approval by the Court.

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11 AGREED TO FOR THE EEOC:

12 Mary Jo O'Neill
13 Mary Jo O'Neill
14 Regional Attorney

15 Andrea G. Baran
16 Andrea G. Baran
17 Supervisory Trial Attorney

18 Meenoo Chahbazi
19 Meenoo Chahbazi
20 Trial Attorney

21 Christopher Houk
22 Christopher Houk
23 Trial Attorney

24 Equal Employment Opportunity
25 Commission
26 3300 N. Central Ave., Suite 690
27 Phoenix, AZ 85012

28 Attorneys for Plaintiff

AGREED TO FOR DEFENDANTS:

Sharon S. Moyer
Sharon S. Moyer
Sacks Tierney P.A.
4250 N. Drinkwater Blvd. 4th Floor
Scottsdale, AZ 85251

Attorney for Defendants

[Signature]
President of ABCO West Electrical
Construction & Design L.L.C.

[Signature]
President of ABCO Electrical
Construction & Design L.L.C.

1 This is the final judgment and thus this action is terminated.

2 SO ORDERED, ADJUDGED AND DECREED, this 23rd day of August, 2012.

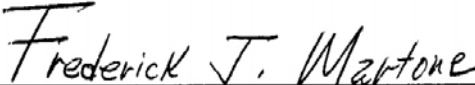
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6 Frederick J. Martone
7 United States District Judge
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EXHIBIT A

**NOTICE TO ALL EMPLOYEES OF
ABCO WEST ELECTRICAL CONSTRUCTION AND DESIGN**

It is unlawful under federal law, Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq., as amended ("the ADA"), and state law to discriminate against an employee on the basis of disability, including failing to provide a reasonable accommodation or otherwise discriminating against applicants or employees with disabilities in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training for applicants and employees, and other terms and conditions of employment. Discrimination under the ADA includes denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, based on the need to make reasonable accommodations for the disabled employee or applicant. It is also unlawful to retaliate against any person because the person protested discriminatory practices, requested a reasonable accommodation, or contacted the EEOC.

ABCO West shall not discriminate against any employee on the basis of disability, including failure to provide a reasonable accommodation, and shall not retaliate against any applicant or employee for complaining about discrimination or requesting a reasonable accommodation.

If you believe you have been discriminated against, retaliated against, or denied a reasonable accommodation, you have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite
690, Phoenix, Arizona 85012
Telephone: (602) 640-5000
TTY: (602) 640-5072
Website (national): www.eeoc.gov; or
- (2) Arizona Civil Rights Division ("ACRD")
of the Attorney General's Office
1275 W. Washington, Phoenix, Arizona, 85007
Telephone: (602) 542-5263
TDD: (602) 542-5002
Toll Free: (877) 491-5742
Toll Free TDD: (877) 624-8090

You also have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against, retaliated against or denied a reasonable accommodation.

No Retaliation Clause. It is against the law for any action to be taken against you by any supervisory or management official for: (1) opposing disability discrimination, a failure to reasonably accommodate, or other discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under the ADA. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD at the addresses or telephone numbers listed above.